

ADOPTED BY THE
MAYOR AND COUNCIL

May 1, 2007

RESOLUTION NO. 20650

RELATING TO CABLE COMMUNICATIONS; APPROVING AND AUTHORIZING
EXECUTION OF A NONEXCLUSIVE CABLE LICENSE BETWEEN THE CITY
OF TUCSON AND COXCOM, INC., DOING BUSINESS AS COX
COMMUNICATIONS TUCSON; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF
TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. That certain cable license agreement between the City of Tucson
as Licensor and CoxCom, Inc., doing business as Cox Communications Tucson as
Licensee, which License is attached to this resolution as Exhibit 1, is authorized and
approved.

SECTION 2. The Mayor is hereby authorized and directed to execute, and the
City Clerk is hereby authorized and directed to attest to the aforementioned Exhibit 1 for
and on behalf of the City of Tucson.

SECTION 3. The various City officers and employees are authorized and
directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace,
health, and safety of the City of Tucson that this resolution become immediately

effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF
THE CITY OF TUCSON, ARIZONA, May 1, 2007.


MAYOR PRO-TEMPORE

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

REVIEWED BY:


CITY MANAGER

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CABLE RENEWAL LICENSE AGREEMENT

WHEREAS, CoxCom, Inc. d/b/a Cox Communications Tucson (hereinafter "Licensee"), has asked the City of Tucson, Arizona (hereinafter "City"), to renew Licensee's non-exclusive license to provide cable services within City; and

WHEREAS, City has conducted proceedings in which Licensee has participated to identify the future cable-related needs and interests of the community; to consider the financial, technical, and legal qualifications of Licensee; and to determine whether Licensee's plans for constructing, operating, maintaining or repairing its system are reasonable; and

WHEREAS, based in part upon Licensee's representations and information, City has determined that, subject to the terms and conditions set forth herein, renewal of a non-exclusive license to Licensee is consistent with the public interest; and

WHEREAS, City is willing to renew such a non-exclusive license conditioned on Licensee's acceptance of the terms and conditions thereof; and

WHEREAS, Licensee is willing to accept the license subject to its terms and conditions and to abide by those terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

Except as otherwise provided herein, the definitions and provisions governing the interpretation of terms as contained in the Cable Ordinance shall govern this Agreement. References to any City official or office also refer to any official or office that succeeds to any or all of the responsibilities of the named official or office. References to "laws" or "applicable laws" include federal, state, and local laws and regulations adopted pursuant to those laws and, unless otherwise stated, include laws now in effect, as the same may be amended from time to time, and new laws. For purposes of this license, the following words, phrases, terms, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in present tense include the future, words in the plural include the singular, and words in the singular include the plural. "Shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) Books and Records. Any recorded information relating to the Cable System, in whatever form stored, including, but not limited to, computerized records and programs, paper records, and video or audio-taped records.

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(b) Cable Act. Title VI of the Communications Act of 1934, enacted as the Cable Communications Policy Act of 1984, and as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as the same may be further amended from time to time.

(c) Cable Ordinance. The City of Tucson Cable Code, Chapter 7A of the Tucson Code, as amended from time to time.

(d) Cable Service. (A) The one-way transmission to subscribers of (i) video programming or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 151, *et. seq.*, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Act; or (E) any facility of any electric utility used solely for operating its electric utility system. Except that as used herein, the term specifically refers to Licensee's Cable System within the Service Area. The term is used to refer to the Cable System as a whole, or to any part of the Cable System, including equipment or facilities appurtenant thereto, such as, by way of example and not limitation, equipment cabinets.

(f) Construction, Operation, Maintenance or Repair. These and similar formulations of those terms refer to the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, tree trimming etc.

(g) City Manager. References to the City Manager include the City Manager, or any City employee designated by the City Manager to perform any of the City functions pursuant to this Agreement.

(h) Arizona Gross Revenue. Arizona Gross Revenue means gross revenue as defined by Arizona law, A.R.S. § 9-505(6).

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(i) License Agreement or Agreement. This contract and any amendments, exhibits, or appendices hereto.

(j) Licensee. Licensee means CoxCom, Inc., d/b/a Cox Communications Tucson, a Delaware corporation and its lawful and permitted successors and assigns.

(k) Rights-of-Way. The term "Right(s)-of-Way" refers to City rights-of-way, alleys, roads, easements, and other City-owned property primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel or any easement the Licensee is authorized to use by federal law. It does not include City-owned real estate utilized primarily for any purpose other than vehicular or pedestrian travel. This exclusion includes without limitation, sidewalks, parking, and ingress/egress areas appurtenant to such other use.

(l) City. The City means the city of Tucson, Arizona.

(m) Service Area. Service Area refers to the corporate limits of the City and any areas hereafter annexed.

(n) 2006 Fee. 2006 Fee means Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000).

(o) Effective Date. Effective Date means June 30, 2007.

(p) PEG Capital Expenses. PEG Capital Expenses shall mean all lawful capital expenditures for public, educational or governmental use.

(q) Gross Revenues . As used in this Agreement, the term Gross Revenues means "Gross Revenues" as defined by Section 7A-2(11) of the Cable Ordinance as of the date of this Agreement.

2. Grant of Authority, Term Limits and Reservations.

(a) Grant of Authority, Term. City hereby grants to Licensee, subject to the terms and conditions of this Agreement and applicable law, the non-exclusive right, privilege, and authority to construct, operate, maintain, and repair a Cable System within the Service Area to provide Cable Service. The license shall remain in effect from the Effective Date for a period of five (5) years, to and through June 30, 2012, unless otherwise terminated pursuant to the terms of this License Agreement. However, the Licensee's license to use Rights-of-Way shall only become effective when all payments and documents that are required prior

to the Effective Date are provided (unless the City waives particular requirements).

(b) Scope of License. The license is intended to convey limited rights and interests only as to those Rights-of-Way in which City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Licensee any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant. The license does not deprive City of any powers, rights, or privileges it now has or may later acquire in the future to use, perform work on, or to regulate the use of, and to control the Right-of-Way, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant drainage facilities, including but not limited to, constructing, altering, removing, paving, widening, grading, or excavating. Unless an emergency exists, City will give Licensee ninety-six (96) hours notice of any excavating which is likely to damage Licensee's lines and appurtenances so that Licensee may protect its lines and appurtenances from any City work.

(c) Exercise of Authority under License. This License Agreement only authorizes Licensee to provide Cable Service. Neither this Agreement nor the grant of the license shall be interpreted to prevent the City from imposing additional conditions consistent with applicable law, including additional compensation conditions for use of the Rights-of-Way should Licensee provide services other than Cable Service. However, this Agreement shall not be read as a concession by Licensee that it needs authorization to provide services other than Cable Service.

(d) License Not Exclusive. The right to use and occupy the Rights-of-Way is not exclusive and does not explicitly or implicitly preclude the issuance of other licenses to construct, operate, maintain or repair Cable Systems within City; or affect City's right to use or authorize the use of any of its Rights-of-Way or other property by other persons as City determines appropriate; or affect the City's right to authorize itself or to permit any other governmental entity to provide Cable Service.

(e) System Authorizations.

(1) In the event that the City authorizes or permits any person subject to the City's licensing authority other than the Licensee to enter into the City's Rights-of-Way for the purpose of providing Cable Service or multi-channel video programming service to any part of the Service Area, including without limitation by means of an "open video system" (as such term is defined in the Cable Act), the material provisions thereof shall be substantially similar to those contained herein, and the obligations imposed on the Licensee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Licensee

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hereunder, in order to ensure that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. This provision only applies in cases where the City has clear legal authority to impose such terms and conditions. The City is not required to undertake any litigation to secure Licensee's rights under this Section 2(e).

(2) This provision shall not apply to:

(A) The University of Arizona, without regard to whether that institution must obtain a license.

(B) Any cable operator whose territory is, after the Effective Date of this License Agreement, or has been prior to the Effective Date, annexed into the City. This exception only applies to the annexed territory.

(C) Any person who seeks a license to provide Cable Service or multi-channel video programming service to any part of the City where Licensee is not providing Cable Service or multi-channel video programming service, as of the date the person's application for a license is submitted to the City, provided that, in the case of new subdivisions where there are no dwelling units:

(i) Licensee was given notice and opportunity to serve the applied-for area; and

(ii) Licensee, by a time specified by the City, failed to agree to extend service to such area within one hundred eighty (180) days.

(3) Licensee agrees that its sole remedy under this Section 2(e) is to seek injunctive or declaratory relief to prevent the issuance of a license that would violate Section 2(e)(1).

(f) Construction of Agreement. The provisions of this Agreement shall be liberally construed to promote the public interest.

(g) Relation to Other Provisions of Law. This Agreement and all rights and privileges granted hereunder are subject to, and the Licensee must exercise all rights granted to it in accordance with, applicable law. However, this Agreement is a contract, subject only to the City's exercise of its police and other powers and applicable law. This Agreement does not confer rights or immunities upon the Licensee other than as expressly provided herein. The Licensee agrees to comply with the terms of any lawfully adopted applicable local ordinance, including the Cable Ordinance, to the extent that the provisions of the ordinance do not have the effect of conflicting with the benefits or obligations of the Licensee that are expressly granted herein and are consistent with applicable federal and state law. Subject to the exercise of the City's police and other powers, in the case of any conflict between the express terms of this License

Agreement and the express terms of any City ordinance, this License Agreement shall govern. Licensee does not waive its rights to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The license issued and the license fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein or required by applicable law.

(h) Relation to Prior License. As of the Effective Date of this License Agreement, any license previously held by Licensee is superseded and of no further force and effect.

(i) Effect of Grant. By granting this license, City acknowledges and agrees that it has the authority to issue this license and did so pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(j) Effect of Acceptance. By accepting the license, Licensee: (1) acknowledges and accepts City's legal right to issue and enforce the license; (2) accepts and agrees to comply with the provisions of this Agreement and, subject to Section 2(g), the Cable Ordinance; and (3) agrees that the license was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(k) Licensee Bears Its Own Costs. Unless otherwise expressly provided by applicable law or in this Agreement, all acts that Licensee is required to perform must be performed at Licensee's own expense.

(l) No Waiver. The failure of City or Licensee on one or more occasions to exercise a right or to require compliance or performance under this Agreement, the Cable Ordinance, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a breach is not a waiver of any other breach, whether similar to or different from that waived.

(m) No Recourse. To the extent permitted by law, Licensee shall have no monetary recourse whatsoever against City or its Mayor and Council, City Manager, officials, boards, commissions, agents or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of the License Agreement or Cable Ordinance because of the enforcement of the License Agreement or Cable Ordinance, except if such loss, costs, expenses, or damages are the result of the gross negligence of the City and no misconduct of the Licensee. The rights of City under this provision are in addition to, and shall not be read to limit, any immunities City may enjoy under federal or state law.

3. Effect of Changes in Law.

(a) Severability. In the event that a court or agency or legislature of competent jurisdiction acts so that, or declares that, any provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof, all of which will remain in full force and effect for the term of the license, or any renewal or extension thereof. Notwithstanding the above, material terms are not severable.

(b) Effect of Change in Law. Subject to Section 3(a) in the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted, but only to the extent and for the time required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto for the remainder of the term of the Agreement, without the requirement of further action on the part of either party.

4. Transfers.

All rights granted under the license are for personal services. Transactions or events subject to Sections 7A-27 and 28 of the Cable Ordinance are subject to the prior approval of the City as provided in the Cable Ordinance, with the exception that no consent shall be required for a mortgage or other hypothecation, or by collateral assignment of any rights, title, or interest of the Licensee in the license or Cable System in order to secure indebtedness. *Provided, however,* no such transaction shall permit a person to succeed to ownership or control of the Cable System or the license without prior approval of the City as provided in Sections 7A-27 and 28. It shall be a violation of this Agreement to extend the benefits of this license to any cable operator or to any cable system that is operating within the City but which has not obtained a license from the City, and Licensee agrees that it will not enter into any transaction that would have such an effect. This Section 4 neither expands, waives nor limits the parties' rights and obligations under 47 U.S.C § 537 and 47 C.F.R. § 76.502.

5. License Fees and Support for PEG Capital Expenses.

(a) Payment to City. In return for the authorization herein to use the Rights-of-Way to provide Cable Service, Licensee annually shall pay to the City as a license fee the greater of:

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(1) an amount equal to the 2006 Fee; or

(2) an amount equal to five percent (5%) of its Arizona Gross Revenue.

(b) Apportionment of Payment Among License Fees and PEG Capital Expenses. If Licensee's payment in a given year under subsection (a) is equal to the amount set forth in subsection (a)(1), the difference between Licensee's payment and the amount equal to five percent (5%) of Licensee's Gross Revenues shall be apportioned by the City to cover PEG Capital Expenses, and the City agrees, as a condition of its acceptance of payment from Licensee, that it will so apportion Licensee's payments. If Licensee's payment in a given year is equal to the amount set forth in subsection (a)(2), no apportionment is required.

(c) Right-of-Way Permit Fees. The full amount of all Right-of-Way permit fees paid by Licensee to the City will be offset and a credit against the license fee required by this Section 5.

(d) Not in Lieu of Any Other Assessments, Taxes or Fees. The license fee is in addition to all other fees, assessments, taxes or payments that Licensee may be required to pay under any federal, state, or local law, subject to any limitations set forth in 47 U.S.C. § 542 and A.R.S. §§ 9-505, 9-506.

(e) Payments. The license fee shall be paid in quarterly installments. Until Crossover, the payment for each quarter shall be equal to one-fourth (1/4) of the 2006 Fee. "Crossover" means the quarter in which five percent (5%) of Licensee's Arizona Gross Revenue under this License Agreement exceeds one-fourth (1/4) of the 2006 Fee. After Crossover, all further quarterly payments will be based on the amount described in subsection (a)(2) under this Section as calculated on a quarterly basis, but in no event shall any quarterly payment be less than one-fourth of the 2006 Fee.

Right-of-Way permit fees paid to the City by Licensee under subsection (c) shall be subtracted from the quarterly installment payment for that quarter or the subsequent calendar quarter. In the event that a license fee payment or other sum due is not received by the City on or before the due date, or is underpaid, Licensee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under Arizona law, or ten percent (10%) if no such rate is legally specified, compounded daily.

(f) No Accord or Satisfaction. Except as set forth in this Agreement, no acceptance of any payment by City shall be construed as a release or an accord and satisfaction of any claim City may have for further or additional sums payable under this Agreement or the Cable Ordinance.

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(g) Payment on Termination. If the license terminates for any reason, Licensee shall pay to the City a pro rata share of the license fee due pursuant to subsection (a) based on the number of full months Licensee provided service to the City during the calendar year in which the license terminates, accompanied by a statement showing the revenues received during the period and the calculation of the fee. City reserves the right to satisfy any remaining financial obligations of Licensee to City by utilizing the funds available in any security fund or other security provided by Licensee.

(h) Disputes. The City shall have the right to audit the books and records of Licensee to determine whether the Licensee has paid the license fee owed in accordance with the terms of this Agreement. If there is a dispute as to whether a particular item of revenue is within the scope of the term Gross Revenues or Arizona Gross Revenue, and Licensee withholds revenue records on the ground that the revenues are not subject to the license fee, Licensee agrees that it will provide a certified statement describing the nature of the revenues contained in the records withheld and further agrees to pay all costs, including attorneys' fees, that the City incurs should the City ultimately prevail in the dispute. Disputes concerning the payment of the license fee shall be resolved in accordance with the procedures specified in Section 9(c) hereof.

6. Notices.

All written notices to Licensee required by this License Agreement shall be provided to:

CoxCom, Inc. d/b/a Cox Communications Tucson
1440 East 15th Street
Tucson, Arizona 85719
Attn: VP & System Manager

With copy, which itself does not constitute notice, to:

Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: Legal Department

until Licensee changes that address by notifying the City Manager in writing of the new address.

All written notices required by this License Agreement to be provided to City shall be mailed to:

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City Manager
City of Tucson
255 W. Alameda
Tucson AZ 85701

until the City changes that address by notifying Licensee in writing of the new address.

A notice also may be provided to either party by depositing it in the U.S. Mail, first class postage prepaid, or by overnight delivery service. Notwithstanding any other provision of the Cable Ordinance, notice also may be provided to Licensee by facsimile at the following number: (520) 624-5918. Licensee may change this number by providing written notice of a substitute number to the City Manager.

7. Insurance and Indemnification Requirements.

(a) Indemnity.

(1) Licensee shall indemnify, save harmless and defend the City, its Mayor and Council, appointed boards and commissions, officers and employees, individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind (including but not limited to libel, slander, invasion of privacy, unauthorized use of any trademark, trade name or service mark, copyright infringement, injury, death or damage to person or property) arising out of or in any way connected with the installation, construction, operation, maintenance, repair or condition of the Cable System. Licensee shall assume all risks in the operation of the Cable System and shall be solely responsible and answerable for any and all accidents or injuries to persons or property arising out of the performance of the License Agreement. The amounts and types of insurance coverage requirements set forth in subsection 7(b) shall in no way be construed as limiting the scope of indemnity set forth in this subsection. The City shall give the Licensee written notice within twenty (20) days of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section 7, where the Licensee is not a party thereto.

(2) Licensee shall indemnify, save harmless and defend the City, its Mayor and Council, appointed boards and commissions, officers and employees, individually and collectively from all fines, liens, suits, claims, demands, actions, costs of litigation, attorneys' fees, judgments or liability of any kind arising from the defense of any litigation brought by third parties challenging the right of the City to issue the license under state law. The City shall give the Licensee timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the indemnity of this Section, where the Licensee is not a party thereto. In the event that any such litigation ensues, the

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City may, but is not required to, tender the defense of such litigation to Licensee, which shall then defend the litigation; provided, however, that if the City tenders such defense to Licensee, Licensee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Licensee (and as determined in the sole discretion of the City, acceptable to the City), or at any time of its election, to terminate this License Agreement under the termination terms provided in this License Agreement and withdraw from any such litigation. Licensee shall assume the risk of, and shall relinquish any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the statutory authority to issue the license on the date of issuance.

(b) Insurance. Within thirty (30) days after this Agreement is signed by the City, Licensee shall file with the City Manager and maintain in full force and effect throughout the term of the License Agreement insurance policies issued by an insurer duly authorized to conduct business in the state, insuring with respect to the installation, construction, operation and maintenance of the system as follows:

(1) Comprehensive general and automobile liability coverage including, but not limited to: (A) blanket contractual liability; (B) completed operations liability; (C) broad form property damage endorsement, including but not limited to coverage for explosion, collapse and underground hazard; and (D) automobile non-ownership liability. This insurance shall be written in the following minimum amounts:

(A) For bodily injury, including death: \$500,000.00 combined single limit;

(B) Property damage: \$500,000.00 combined single limit;

(C) Comprehensive automobile liability; bodily injury: \$500,000.00 combined single limit;

(D) Excess umbrella liability in the minimum amount of \$5,000,000.00.

(2) Workers' compensation coverage as required by the laws, rules and regulations of the state.

(3) All insurance policies required herein shall include the City as an additional insured.

(4) With respect to the insurance required herein, Licensee shall be solely responsible for all premiums due and payable.

(5) The insurance policies required by this Section shall contain the following endorsement: It is hereby understood and agreed that this policy of insurance may not be canceled by the insurer nor the intention not to renew be stated by the insurer until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew.

(6) It is Licensee's responsibility to ensure that every insurance policy conforms to the City's requirements. Licensee must provide a standard insurance certificate or other adequate proof required by the City Attorney, updated whenever there is a change in the policy or insurer, showing that the policies conform to all the requirements herein, without condition or exception. Licensee may not initiate or begin construction until such proof has been provided.

8. Security Fund, Performance Bond and Letter of Credit.

(a) Amount. Prior to the Effective Date, Licensee shall establish and provide to City an irrevocable and unconditional letter of credit ("LOC"), as security for the faithful performance by Licensee of the provisions of this Agreement. The LOC shall be Forty Thousand Dollars (\$40,000) and shall be with a local financial institution and in a form acceptable to the City Attorney. The LOC may be drawn on and shall be replenished as provided in this Section.

(b) Use. City may draw on the LOC to ensure the Licensee's faithful performance of and compliance with this Agreement, applicable law, and all orders and permits of City. This may include, by way of example and not limitation, if Licensee fails to pay City any fees or taxes due, liquidated damages, or damages incurred by City by reason of any act or default of Licensee, or if Licensee fails to comply with any provisions of the License Agreement, applicable law or with any order or permit of City, which failure City determines can be remedied by an expenditure from the LOC. City shall notify Licensee of the amount and date of the withdrawal. Licensee's recourse, in the event Licensee believes any draw upon the LOC is improper, shall be through the procedures set forth in Section 9(c)(3)-(5), but only after the LOC has been drawn upon. The sole issue in that instance before the Zoning Examiner shall be whether the draw upon the LOC was improper. If City's action or taking is found to be improper by the Zoning Examiner, Licensee shall be entitled to a refund of any improperly withdrawn funds plus interest and/or any other specific performance which the Zoning Examiner may order.

(c) Restoration of LOC. Within fifteen (15) days after City gives Licensee written notice that the LOC has been drawn upon, Licensee must take all steps required to restore the LOC to the original amount.

(d) Return of Fund. Licensee's obligation to maintain the LOC shall survive the termination of the license, until all obligations to the City have been satisfied.

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However, if the License Agreement terminates for any reason, and Licensee has ceased to provide Cable Service in City, and the City has determined that Licensee does not owe funds to the City and is not in default, the Licensee's obligation to maintain the LOC shall also terminate.

(e) Performance Bond. Within thirty (30) days after written notification of the award of the license, Licensee shall post a performance bond in connection with its system walk-out, repair and upgrade in the amount of One Million Dollars (\$1,000,000). The bond shall be with an entity and in a form acceptable to the City. The bond may be drawn upon to secure the faithful performance of any obligations of Licensee under its license or other applicable law and must be maintained continuously throughout the term of this License Agreement.

9. Liquidated Damages.

(a) Amounts. Because Licensee's failure to comply with provisions of this Agreement will result in injury to City, and because it will be difficult to estimate the extent of such injury, City and Licensee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 2007 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index for Urban Areas (the "CPI-U"). Provided, however, the liquidated damage amounts shall first be increased from 2007 levels in the year following the year that the CPI-U increase from 2007 levels equals or exceeds fifteen percent (15%). For example, if the CPI-U rises four percent (4%) in 2008, five percent (5%) in 2009 and six percent (6%) in 2010, then the liquidated damage amounts would be increased fifteen percent (15%) in 2011, and thereafter would increase annually.

(1) For failure to complete construction or commence operations of the portion of the Cable System that is primarily intended to serve residential subscribers: \$500/day;

(2) For failure to extend a service line as required: \$20/day for each affected subscriber for each day the violation continues;

(3) For failure to provide any capacity for public, educational, and governmental use of the Cable System as required in this License Agreement: \$1000 for each violation for each day the violation continues;

(4) For violation of applicable customer service standards where violations are not measured in terms of aggregate performance standards: \$50 per violation multiplied by the number of affected subscribers;

(5) For violating any customer service aggregate performance standard: \$2,000 for violation of one measurement period; if Licensee violates the same standard in the next measurement period, \$4,000; \$6,000 for the third consecutive measurement period; and \$10,000 for the fourth and each subsequent consecutive measurement period violation during the term of this Agreement;

(6) For all other violations of this Agreement or of the Cable Ordinance for which actual damages may not be ascertainable: \$200/day for each violation for each day the violation continues.

(7) For violation of any federal, state, or local safety code requirement, \$200/day for each violation for each day the violation continues.

(b) Date of Violation, Notice. The date of violation will be the date of the event and not the date Licensee receives notice of the violation except in cases where Licensee did not know and could not reasonably have been expected to know that a violation occurred, in which case damages shall accrue from the date Licensee was placed on notice of the violation.

(c) Procedure for Liquidated Damages, Forfeiture, Revocation or Termination. Before the City may assess any liquidated damages under this License Agreement, collect a contested amount owed under subsection 5(g), or declare a forfeiture, revocation, or termination of the license, or draw upon the performance bond in connection with the same, the City shall give the Licensee written notice and an opportunity to be heard in accordance with the following procedure except in any proceeding governed by 47 U.S.C. § 546.

(1) The City shall notify the Licensee, in writing, of the alleged failure or violation, which notice shall specify the alleged failure or violation with reasonable particularity.

(2) The Licensee shall, within thirty (30) days after receipt of the notice or such longer period as the City may specify in such notice, either cure the alleged failure or violation (which cure shall include payment of accrued damages, unless these are waived by the City) or, in a written response to the City Manager, either present facts and arguments in refutation or excuse of such alleged failure or violation or state that the alleged failure or violation will be cured and set forth the method and time schedule for accomplishing such cure (which cure shall include payment of accrued damages, unless these are waived by the City). Nothing prevents the City and Licensee from waiving the damages for the cure period.

(3) Unless the City Manager determines that the matter has been resolved, the Licensee's response shall be submitted to the Zoning Examiner, to schedule a public hearing at which the Zoning Examiner shall determine (i) whether a failure or violation has occurred; (ii) whether such failure or violation is excusable; and

(iii) whether such failure or violation has been or will be cured by the Licensee; and (iv) the appropriate remedy for the failure or violation.

(4) The Zoning Examiner shall provide thirty (30) days' written notice of the public hearing to the Licensee. During the public hearing, Licensee shall have the right to appear and be heard, and the hearing shall follow the procedures set forth in Tucson Code Sec. 7-110(a), (c)-(d). If the Zoning Examiner determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a reasonable schedule satisfactory to the Zoning Examiner or that the failure is excusable, such determination shall conclude the matter, unless Licensee fails to comply with the schedule for cure.

(5) Following the public hearing and a Zoning Examiner finding that a failure to comply with a material provision of this License Agreement has occurred and that such failure is not excusable and has not been or will not be cured by the Licensee in accordance with a reasonable schedule satisfactory to the City; or Licensee fails to comply with a previously ordered schedule for cure, the Zoning Examiner may issue a written decision ordering liquidated damages, forfeiture, termination or revocation in accordance with Section 9. Such decision shall be served on the Licensee and shall be subject to judicial review as provided by law.

10. Relationship of Remedies.

(a) Remedies Are Non-exclusive. The rights and remedies of City set forth in this License Agreement shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Licensee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same alleged default.

(b) No Election of Remedies. Without limitation, the withdrawal of amounts from the LOC, or the recovery of amounts under the insurance, indemnity or liquidated damages provisions of this Agreement shall not be construed as any of the following: an election of remedies; a limit on the liability of Licensee under the License Agreement for damages or otherwise; or an excuse of faithful performance by Licensee.

11. Non-discrimination.

(a) No Discrimination in the Provision of Service.

(1) Licensee shall comply with all applicable local, state and federal laws and regulations prohibiting discrimination, including without limitation, Chapter 17 of the Tucson Code, and any and all other laws and regulations prohibiting

discrimination in the provision of cable service or employment. Licensee shall maintain records and information necessary to document Licensee's compliance with these provisions.

(2) Licensee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right the person may have under federal, state, or local law. Nor may Licensee require a person to waive such rights as a condition of taking service.

(3) Licensee is specifically prohibited from denying access or levying different rates and charges on any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(4) To the extent City may enforce such a requirement, Licensee is specifically prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers. Licensee may, however, offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similarly situated persons throughout the Service Area; and Licensee may offer special discounted rates for the basic and other regulated service tiers to economically disadvantaged subscribers and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. The foregoing notwithstanding, however, Licensee shall not be prohibited from exercising any rights expressly conferred upon it as a result of a determination of effective competition from the Federal Communications Commission, including without limitation all such rights under 47 U.S.C. § 543, not in conflict with other provisions of federal law.

(b) Equal Employment Plan. To the extent required by applicable law, Licensee must adopt and follow equal employment opportunity and M/WBE plans that comply with all applicable provisions of federal, state and local laws and regulations (which requirement includes the obligation to amend the plans to bring them into compliance with those laws and regulations, as hereafter amended or interpreted). Any approved M/WBE plan existing on the Effective Date shall remain in effect unless updated by the Licensee. If there is no such plan, a plan must be submitted to City no later than sixty (60) days after the signing of this Agreement by the City for City's review and approval.

(c) Discrimination. During the performance of this Agreement, neither Licensee nor any party subcontracting under the authority of this Agreement shall discriminate on the basis of age, ancestry, creed, color, marital status, national origin, race, religion, gender, sexual or affectional preference, or the presence or perception of any mental, physical or sensory handicap against any employee or applicant for employment, unless based on a bona fide occupational qualification,

or in the administration or delivery of services or any other benefit under this Agreement.

12. Rates and Charges.

(a) City Authority. City may regulate Licensee's rates and charges except to the extent it is prohibited from doing so by applicable law. However, the City may regulate rates for the provision of any Cable Service only as expressly permitted by applicable law.

(b) Late Fees. The Licensee may charge a fee for the recovery of costs incurred to collect late payments for Cable Service if the following conditions have been met:

(1) The subscriber's bill sets forth the circumstances and conditions under which the fee will be assessed;

(2) The bill complies with, and the fee is assessed in accordance with Section 7A-20(8)(c) of the Cable Ordinance, as that subsection reads on the Effective Date, and with requirements of state and federal law; and

(3) The bill sets forth the amount of the fee.

(c) Presumption. Any fee imposed by the Licensee that does not exceed \$5.00 in 2007 dollars (as adjusted annually for inflation based on the Consumer Price Index) shall be presumed reasonable by the City to cover the costs associated with the delinquent payment and no review by the City will be necessary. The assessment of a fee pursuant to this Section 12 shall not be construed as a limitation on the Licensee's right to charge any other lawful fees or charges, subject to subsection (a).

(d) Experimental Cable Service. Subject to Sections 11 and 12 of this Agreement, Licensee may conduct experimental Cable Service and service offerings to particular regions of the City without making the service generally available throughout the City. Experimental Cable Service is subject to license fees.

(e) Notice of Changes. The City shall be notified of any change in rates, programming services, or channel position at least thirty (30) days in advance of such change by letter delivered to the City, except where such notification is impossible because the change is beyond the control of Licensee or any affiliate, in which case the notice will be given as quickly as possible.

13. Subscriber Service.

(a) Broad Categories of Service. Licensee agrees that it will provide broad categories of Cable Service responsive to the needs and interests of the community throughout the term of this License Agreement.

(b) Line Extension. Licensee will extend service to subscribers and potential subscribers in accordance with the requirements of the Cable Ordinance except as modified by this subsection. The term License Area as used in the Cable Ordinance refers to Service Area as defined in this Agreement. *Provided, however,* Licensee is not required to extend its Cable System into any area that is served by another cable operator of a cable system. This exception shall be read narrowly, and in the case of a dispute as to whether an area is served by another cable operator of a Cable System, the City shall decide who has responsibility to serve the area. Further, if Licensee extends service into any part of an area served by another cable operator of a Cable System, the City may require Licensee to serve all portions of that area. If Licensee refuses to extend service into an area served by another cable operator, after being given an opportunity to do so, the City may remove that area from the Licensee's Service Area.

(1) Required Extensions of Service. Licensee agrees to provide Cable Service subject to the density requirement specified in this Section 13(b), rather than the fifteen (15) residential dwelling units per street half-mile specified in the Cable Ordinance. Service shall be provided to all parts of the Service Area where there are at least thirty (30) residential dwelling units per street mile.

(2) Subscriber Charges for Extensions of Service. If a potential subscriber resides in an area that does not meet the density requirements of paragraph (1) above, the Licensee shall only be required to extend the Cable System if the subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction, including cost of material, labor, and easements. Specifically, the Licensee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per mile of its trunk or distribution cable, and whose denominator equals thirty (30). Subscribers who request service hereunder shall bear the remaining construction costs on a *pro rata* basis. The Licensee may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. The subscriber shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

(3) Nothing in this paragraph or in the Cable Ordinance requires Licensee to serve a subscriber or potential subscriber within an MDU where Licensee is required to obtain a private easement to serve, and where Licensee is not able to

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negotiate a mutually agreed private easement; *provided however*, Licensee shall serve an MDU where Licensee can fully recover the cost of the required easement, if any, and its costs of installation over a period consistent with standard industry cost recovery practices.

(c) Customer Service Requirements. Licensee shall satisfy federal, state and local customer service standards and consumer protection laws, as amended during the term of this License Agreement.

14. System Upgrade.

(a) System Design.

(1) General System Design and Upgrade. Licensee has determined that an appropriate design plan for the system upgrade in the City will include the following requirements, which Licensee will provide and construct:

(A) The system will use a fiber to the neighborhood node architecture.

(B) The system will serve no more than one thousand (1,000) households per fiber node.

(C) All active electronics will be 860 MHz capable equipment, or equipment of higher bandwidth.

(D) The system will be two-way activated and able to support high-speed Internet access.

(E) All passives that cannot pass 860 MHz will be replaced.

(F) All power supplies will contain back-up power capabilities. Status monitoring and battery back-up will be operational at each unit.

(2) Completion of Upgrade. Licensee will complete the upgrade of the Cable System described in Section 14(a)(1) within three (3) years of the Effective Date of this Agreement.

(3) System Functionality.

(A) As upgraded and maintained, the Cable System must have a reliability comparable to the reliability of those cable systems whose initial construction or rebuild was completed after 2006.

(B) As designed, upgraded and maintained, the Cable System must be adequately segmented to meet subscriber demand.

(C) As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet FCC technical quality standards regardless of the particular manner in which the signal is transmitted.

(D) The requirement that back-up power be provided requires twenty-four (24) hour backup at the Principal Headend, three (3) hour backup at each node, and six (6) hour backup for hub sites and optical transfer nodes. Such equipment shall be constructed and maintained so as to be capable of cutting in automatically upon failure of the commercial utility power; to revert automatically to a standby mode when alternating current power returns; and so that it complies with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line so as to prevent injury to any person. Power to the nodes will be monitored remotely.

(E) Consistent with FCC requirements, Licensee shall continue to provide an emergency alert system ("EAS") with at least the capabilities of the emergency alert system ("EAS") that it was required to provide under its prior license. Without limiting the foregoing, this includes the obligation to provide an EAS that can be activated from a touchtone phone by an official designated by the City, and which will provide at least all-channel audio override. The video override required by the Cable Ordinance shall be provided on Channel 12, or such other channel as the parties may mutually designate.

(F) Licensee will deliver at least 77 channels of video programming services to subscribers.

(4) Inspection of Cable System.

(A) Licensee will inspect its Cable System completely and replace parts that do not work, that are in disrepair or that would impair performance.

(B) Nothing in this Section shall be read to relieve Licensee in any respect of its obligation to comply with safety codes.

(C) Licensee will work with the City to jointly select test points that can be used by the City to itself test Cable System performance at the City's sole cost and expense so long as the designated test points are consistent with FCC requirements. Licensee shall have a right to have designated personnel present during the tests at Licensee's sole cost and expense. Tests shall occur no more than twice annually unless (i) tests performed by the City or by Licensee show a problem; or (ii) the City receives documented complaints regarding system performance.

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(5) Interconnection.

(A) This paragraph 5 will control interconnection with other cable systems.

(B) The Licensee shall interconnect the Cable System with all other willing cable systems in the City and adjacent willing cable systems in the County for purposes of delivering public, educational and governmental programming to and from the interconnected systems. A "willing cable system" means the franchised or licensed Cable System of any cable operator who is otherwise willing to interconnect with Licensee's Cable System on fair and reasonable terms and who pays its own cost of installation and operation of facilities located within its own territory which are required for the interconnection.

(C) The Licensee shall interconnect its Cable System with all other cable systems in the City and adjacent cable systems in the County at the City limits for purposes of delivering public, educational and governmental programming to and from the interconnected cable systems if ordered to do so by the City. If the City directs the Licensee to interconnect its Cable System with another cable system, Licensee shall promptly enter into negotiations with such other system to determine where the interconnect shall be located and what costs for the interconnection will be assessed to the connecting cable system or company, and to develop a schedule for prompt interconnection. Licensee may require advanced payment before commencing the interconnection. The parties shall have sixty (60) days to reach an interconnection agreement, and if an agreement cannot be reached, the City may resolve interconnection issues as provided in Section 7A-12 of the Cable Ordinance.

(D) Notwithstanding the foregoing, interconnection is only required if technically feasible. It is not Licensee's responsibility to ensure that the signals provided by another interconnecting system to the interconnect are of adequate quality; Licensee may terminate an interconnection for any period where an interconnecting system is delivering signals in a manner which endangers the technical operation of Licensee's Cable System. Public, educational, and governmental programming delivered from an interconnected cable system to Licensee's Cable System will be delivered to PEG Access Centers. Nothing in this paragraph alters Licensee's channel obligations under Section 15 for public, educational and governmental programming delivered to subscribers on the Licensee's Cable System. Unless the City directs otherwise, or an affected jurisdiction objects, any interconnection shall allow PEG signals to operate without disruption or delay across Service Area boundaries.

(E) In addition to the foregoing, all interconnections existing as of January 1, 2007 will be maintained.

15. Channels, Facilities, Equipment and Services for Public, Educational and Governmental Use.

(a) Definitions.

- (1) "PEG" means public, educational, and governmental.
- (2) "PEG Channels" refers to channel capacity on the Cable System designated for PEG use.
- (3) "Analog PEG Channel" means an analog channel designated for PEG use.
- (4) "Digital PEG Channel" means a digital channel designated for PEG use.
- (5) "Digital Fire Channel" means the Digital PEG Channel that, as of March 1, 2007 was primarily programmed by the Tucson Fire Academy.
- (6) "Higher Education PEG Channels" means the three (3) Analog PEG Channels that, as of March 1, 2007, were primarily programmed by the University of Arizona ("UA") (1 channel) and the Pima County Community College ("PCC") (2 channels).
- (7) "Access Center" refers to a facility or facilities where PEG use signals are managed and delivered to the Licensee for downstream transmission to subscribers, the Institutional Network or to other Access Centers via a dedicated connection.
- (8) "Access Manager" refers to the entity or entities designated by the City to manage or co-manage PEG Channels. The City can be an Access Manager.
- (9) "Institutional Network" refers to that communications network constructed by Licensee, the ownership of which was transferred to the City by Agreement dated June 15, 1998.
- (10) "Origination Point" refers to a location other than an Access Center, where PEG programming is delivered to the Licensee for upstream transmission.
- (11) "Principal Headend" refers to Licensee's central signal control facility in the City of Tucson.

(b) Channel Capacity on Effective Date of License. On the Effective Date of this Agreement, Licensee will provide the City with eight (8) Analog PEG Channels, including three (3) Higher Education PEG Channels and one (1) Digital PEG Channel. The offering and carriage of these PEG Channels during the term of this Agreement is subject to the modifications required by subsection 15(c).

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Nothing in this Section 15 prevents the City from designating different or additional Access Managers for any of the PEG Channels from time to time.

(c) Channel Capacity During the Term of the Agreement.

During the term of this Agreement, Licensee will provide PEG Channels to the City in accordance with the following terms:

(1) Within thirty (30) days of the Effective Date of this Agreement, Licensee may remove one (1) Analog PEG Channel designated by the City from the analog tier of Licensee's Cable System.

(2) Higher Education PEG Channels are governed by the following:

(A) Licensee may cease carriage of one Higher Education PEG Channel as of the later of, the Effective Date or no later than thirty (30) days after Licensee has entered into a final written agreement that provides UA a channel in addition to channels that Licensee may separately provide the UA as part of the carriage of KUAT's analog, digital and high definition signals. The agreement may be reached before or after the Effective Date. The agreement with UA shall make available to UA at least one Digital PEG Channel. The City will not have the authority to determine the program content of the channel provided to the UA under the agreement, unless the channel reverts to the City, as provided herein.

(B) Licensee may cease carriage of two additional Higher Education PEG Channels as of the later of, the Effective Date or no later than thirty (30) days after Licensee has entered into a final written agreement with PCC that provides PCC at least one Digital PEG Channel and, for a limited time, at least one Analog PEG Channel. The agreement may be reached before or after the Effective Date. Carriage of the Analog PEG channel shall, under all circumstances (including if no separate agreement is reached with PCC), cease on June 1, 2008. The City will not have the authority to determine the program content of the channels provided to PCC under the agreement, unless the channels revert to the City, as provided herein.

(C) Once a channel is provided to the UA or PCC under subparagraphs (A) or (B) pursuant to a separate agreement or separate agreements with either or both of the UA and/or PCC, continued carriage on the Cable System of any channel so provided will be pursuant to such separate agreements, and will no longer be governed or required by this Agreement. During the term of this Agreement, upon termination of a separate agreement or agreements with UA or PCC referenced in this subparagraph (C), Licensee will provide the City with one (1) Digital PEG Channel for each PEG Channel that was provided pursuant to the agreement with UA or PCC that terminated. Any PEG Channels returned under this subparagraph (C) must be used for higher education.

(D) Licensee may not cease carriage of Higher Education PEG Channels under this subsection (c)(2) if the agreement with UA or PCC is inconsistent with subsection (d)(2); or prevents PCC or UA from using the connections provided as of the Effective Date of this Agreement; or prevents PCC or UA from continuing to serve as an Origination Point.

(3) On the earlier of (i) the date when sixty-five percent (65%) of Licensee's subscribers within the Service Area are receiving digital cable service or (ii) December 1, 2009, the City will designate one Analog PEG Channel to be dropped from Licensee's analog basic service tier. The Analog PEG Channel may be dropped within thirty (30) days of the City designation. No later than the date that carriage of the Analog PEG Channel designated in this paragraph (3) may be dropped:

(A) Licensee shall provide one (1) additional Digital PEG Channel to the City; and

(B) Licensee shall make available to the City two thousand (2000) hours of entertainment-on-demand capacity exclusively for the transmission of PEG programming. This entertainment on demand capacity provided by Licensee shall permit the City to provide virtually live programming directly to Licensee's subscribers, and shall otherwise conform to the requirements of Exhibit A. This capacity shall be provided until this Agreement terminates.

(4) All Analog PEG Channels shall be carried on the basic service tier without additional charge, and if there is no basic service tier shall be available to all subscribers, without additional charge. All Digital PEG Channels and PEG entertainment-on-demand capacity shall be available without additional charge to all of Licensee's digital subscribers.

(5) If subscribers have the ability to select channels on the Cable System through a menu system, the PEG Channels shall be displayed in the same manner as other channels.

(6) The channel capacity allotted in this Section 15 can be used for any lawful PEG purpose. Channel capacity shall be of a quality, and have the same features and functionality as channels provided by Licensee to broadcasters. Any non-standard NTSC or digital video use of PEG Channels shall be subject to the Licensee's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Such uses must be in furtherance of PEG purposes.

(7) The City may not lease any PEG Channel capacity without the express written permission of the Licensee.

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(8) Subject to federal must-carry obligations, the position of government Channel 12 will not be changed except by mutual agreement of the parties.

(9) PEG capacity used for video programming may not be used to cablecast commercial matter. "Commercial matter" means time sold for purposes of selling a product or service. Nothing in this paragraph (9) prevents activities designed to defray costs that the City or Access Manager is required to bear. By way of example and not limitation, the parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast station; or to prevent schools from charging course fees, and then delivering the course via the PEG Channels; or to solicit financial support for the provision of PEG Access by Access Managers or for charitable, educational or governmental purposes.

(d) Management and Control of PEG Channels.

(1) City Designates Manager. The City may designate one or more Access Managers to manage the Channels set aside for PEG use. The responsibilities of these entities are solely a matter for the City's judgment.

(2) Licensee Is Not To Exercise Editorial Control Over Programming. Licensee may not exercise any editorial control over the content of PEG programming, except as expressly permitted by federal law. The City will not hold Licensee responsible for the content of any PEG programming (other than programming that Licensee may produce which is cablecast on the PEG Channels). Without limiting the significance of any other provision, it is a material violation of this License Agreement and of the rights of PEG users for the Licensee to exercise editorial control over PEG programming in violation of this Section (15). Licensee also agrees not to enter into any exclusive agreement regarding any programming distributed on a PEG Channel (including programming distributed on a channel provided to PCC or UA pursuant to subsection (c)(2) that would prohibit the distribution of that programming on any cable system or in any other medium.

(e) Responsibilities of the Parties with Respect to the PEG Portion of the Cable System.

(1) Generally; Access Managers. In addition to managing the Channels, the Access Managers are responsible for:

(A) Delivering signals to the Licensee at Origination Points and at the Access Centers to the input of the devices that process the signals (modulating or encoding them) (referred to as the "Upstream Delivery Points") so that they can be carried on the Cable System; and receiving signals from the Licensee at the Access Centers from the Subscriber Network, other Access Centers, the

Institutional Network and Origination Points at the output of the devices (referred to as the "Downstream Delivery Points") that reformat the signals into the format in which they were originally delivered to the Licensee.

(B) Controlling the routing of signals to the appropriate PEG Channels;

(C) Providing and maintaining the studios and equipment used to produce PEG programming; and

(D) Providing the necessary information required to properly list programming on the PEG Channels on menus and sub-menus, including menus and sub-menus for the on-demand capacity provided herein.

(2) Generally; Licensee. In addition to its other PEG channel capacity obligations, the Licensee is responsible for transmitting signals from the Upstream Delivery Points to Downstream Delivery Points, to the Institutional Network and to subscribers without material degradation and maintaining all the lines, electronics, laser transmitters and other devices within its control required to do so. Signals must be transmitted in their entirety, and so that the PEG Access Managers can take full advantage of the Channels reserved for PEG use.

(3) Designation of Access Centers and Origination Points. Without limiting the foregoing, Licensee shall provide and maintain the connections existing or required under the prior license, including those identified on Exhibit B attached hereto. The City may designate Origination Points and Access Centers in addition to those existing or required as of March 1, 2007, but the City is responsible for paying Licensee the incremental cost of providing the most cost-effective connection to those additional locations, given the functions that will be performed at the locations.

(4) Connections to and from Access Centers and Origination Points. In addition, Licensee is responsible for the following:

(A) The connections from the Origination Points must be provided and maintained so that each Origination Point may at least transmit a single NTSC analog or digital full motion video channel (baseband video) to the Licensee's Principal Headend, and to one designated Access Center, without the aid or assistance of the Licensee. *Provided, however,* that Licensee need not support more than two simultaneous upstream transmissions from the Origination Points.

(B) Dedicated connections to and from each of the Access Centers must be maintained, and as appropriate, replaced so that at least the following functionality is provided. The connections must be such that the City can route signals to the Institutional Network or the Cable System:

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(i) The connections to the Public Access Center and to the City Hall and the Convention Center each must support transmission of all PEG Channels upstream to the Principal Headend, plus up to three channels simultaneously downstream, so that channels can be previewed before they are transmitted to the end recipient.

(ii) The connections to other Access Centers each must support the number of channels upstream and downstream that was required as of December 31, 2000.

(C) The connections must support transmissions in any combination of analog and digital channels, and in a variety of formats, so that an Access Center or Origination Point is capable of duplicating functions that Licensee can perform with respect to other channels on the Subscriber Network. For example, if the connections to the subscribers support high-quality transmission of compressed signals to subscribers, the connections to the Access Centers and Origination Points must likewise do so.

(D) The Access Centers may use the bandwidth available upstream on the connections for control signals, and Licensee shall work with Access Centers to ensure efficient use of the upstream capacity for these purposes. Should an Access Center desire it, Licensee will allow the Access Center to provide for the placement of a phone line on Licensee's premises to control PEG devices at the Principal Headend.

(5) Service to Access Centers. Either as part of the connections referred to in paragraph (4), or separately, Licensee must provide free of charge all basic and expanded basic services on the Cable System (premium and pay per view services, however aggregated, are not expanded basic services), and all PEG Channels to a point within each Access Center designated by the Access Center, along with the devices required to use those services. Licensee will continue to provide and maintain the internal wiring at Access Centers used to distribute these signals where it had already provided them as of the date the City signed this Agreement. The Access Centers are otherwise responsible for the internal wiring required to extend the signal to outlets.

(6) Signal Format. PEG Channels must be receivable by subscribers without special expense other than the expense and equipment required to receive basic or digital service, as relevant to the service tier on which the PEG Channels are carried. Access Managers have no obligation to provide a signal to Licensee in a digital format. If, however, the City or any Access Manager requests that its analog PEG Channels on the basic service tier be converted to digital format before Licensee has converted all other basic service channels to digital format, the City or Access Manager is responsible for the cost of converting such channels to digital format.

(7) Technical Assistance. Licensee, upon request of an Access Manager, will provide technical assistance or diagnostic services to determine whether or not any problem with the PEG signals is the result of matters for which Licensee is responsible, and if so Licensee will take prompt corrective actions.

(8) Scrambled Channel. At the expense of the Access Managers, on request, Licensee will scramble audio and video for one of the PEG Channels provided under this Section 15, so that the signal can only be received at authorized addresses.

(9) If Licensee modifies its Cable System in a manner that has the effect of requiring modifications to PEG facilities and equipment, in order to deliver PEG signals, Licensee will bear any cost that the Access Managers must incur as a result. Licensee shall bear all costs associated with modifications to PEG facilities and equipment required by the reduction in the number of PEG Channels and the movement of PEG Channels from the analog to the digital tier.

(f) Other Facilities and Equipment.

(1) Existing Facilities. To the extent Licensee owns equipment or facilities used for the reception or transmission of PEG programming on May 1, 2007 it will continue to provide, maintain and replace such equipment and facilities, except as the parties mutually agree otherwise.

(2) Access to Facilities.

(A) Licensee shall provide up to twenty (20) square feet of space plus the space reasonably required for an Uninterrupted Power Supply System ("UPS"), if one is installed, and additional space if it would not interfere with Licensee's operations at the same premises where its Principal Headend is located for Institutional Network and for PEG purposes. Licensee is responsible for all connections required to the headend and will maintain the devices used to put signals on the Cable System at its headend, and not in the space it sets aside pursuant to this paragraph (2). The space must have adequate ceiling clearance and be otherwise configured for communications equipment racks consistent with racks used by the Licensee and must be easily accessible by the City or its contractors. The space must have environmental conditions and controls, ventilation and power sources equivalent to those at Licensee's headend. The obligation to provide power includes the obligation to provide back-up power, but not a UPS. If additional space is required, beyond the twenty (20) square feet plus UPS space, it will be provided at the City's expense, for the cost to Licensee of providing the space.

(B) If necessary for the cost-effective operation of the PEG Channels and Institutional Network, Licensee shall provide reasonable space at hubs, and

optical and transfer nodes for switching, control and other equipment provided by the City. Licensee shall not be deemed in violation of this provision in the event the permits issued by the City for the construction and placement of optical and transfer nodes specify locations that limit the amount of space available for Licensee's operations. If providing the space results in additional cost to Licensee, it will be provided at the City's expense, for the cost to Licensee of providing the space.

(C) If the Licensee moves its Principal Headend from its present location, it is responsible for the costs to the City associated with that move.

(D) Licensee shall also provide access to its facilities to permit the Access Centers to have access to any such equipment or facilities that may be collocated at the Principal Headend that Licensee does not have sole responsibility to provide and maintain.

(3) Improvements to PEG Network. The City or an Access Manager may at any time choose to upgrade the facilities and equipment used in the production or transmission of PEG signals at its own cost, and, upon reasonable request, Licensee will schedule reasonable access to its facilities as required to permit such upgrade. If the upgrade includes modifications to Licensee's facilities or equipment, Licensee shall have final approval regarding the upgrade plans as necessary, but Licensee will not unreasonably withhold such approval; approval of the modification will not be withheld based upon the nature of the service to be provided, so long as the use is a lawful PEG use.

(g) Encouraging Access Use. Licensee agrees that it will do at least the following at no charge:

(1) Publicize Channels. Licensee will identify the PEG Channels and identify the programming carried on the PEG Channels in its printed and electronic programming guides, in the same manner in which it identifies the channels and programming on channels and audio services under its control. It is each Access Manager's responsibility to provide appropriate entities with program schedules in a timely manner, and if an Access Manager fails to do so for a particular Channel, Licensee may simply identify the general type of programming carried on the Channel.

(2) Provide Advertising Time. Licensee will make available an aggregate of one thousand (1,000) commercial "ad avail" slots per year for use by Access Managers. Commercial "ad avail" time provided under this Section 15 shall be preemptable, subject to availability and scheduled at the discretion of the Licensee.

(3) Provide Notice of and Publicize Channel Changes. The placement of PEG Channels will not be changed without ninety (90) days' prior notice to the City and the Access Manager. Licensee will bear all reasonable equipment and facilities costs caused by the channel change. It also agrees to pay the City, unless the City and Licensee otherwise agree, up to \$5,000 per affected channel to reimburse the Access Manager for the actual cost of publicizing the change in channel position and for related expenses.

(4) Public Use Connections. The Licensee shall provide, without charge, one outlet to a conveniently accessible point in each school, fire station, police station, public library branch, city neighborhood community center, and such other facilities used for municipal purposes as may be designated by the City. Licensee agrees to provide free of charge all PEG, basic and expanded basic services on the Cable System (premium and pay-per view services, however aggregated, are not basic or expanded basic services nor are a la carte or other optional levels of service beyond that which was known on May 1, 2007 as the basic and expanded basic tiers or their future equivalents) to the public use locations, other than the schools, along with the devices required to use those PEG, basic services and expanded basic services. If more than one outlet is required at any of said locations, the facility's administrator may seek bids from qualified persons to perform such multiple work. Any multiple outlet extensions will be designed and built to the Licensee's specifications. Licensee will not charge for service to these additional outlets or for the outlets themselves if not installed by Licensee, but Licensee may charge for any additional outlets and devices needed and installed by Licensee to receive the programs on the additional outlets beyond the number of outlets and devices already provided as the date that the City signed this Agreement. This paragraph (4) shall not be read to require Licensee to provide a new free outlet to locations to which it is already providing a free outlet. Notwithstanding the foregoing, if it is necessary to extend the Licensee's feeder lines more than three hundred (300) feet from the main distribution cable solely to provide new service to any of the above-referred-to facilities, the facility shall have the option either of paying the Licensee's direct costs (time and material) for such extension in excess of three hundred (300) feet or of releasing the Licensee from the obligation to provide an outlet or service to that facility.

(5) Public School Connections. Licensee will provide a letter to the Tucson school districts restating its historic policy to continue to provide free monthly PEG, basic and expanded basic cable service to all public K-12 schools. If Licensee changes this policy in the future, it commits to provide the school districts two (2) years' prior notice.

(h) PEG Available Free Of Charge.

The Licensee shall satisfy all its obligations with respect to PEG under this License Agreement without any charge to the City or Access Managers, and without any offset against any fee owed to the City. The parties agree that none of the obligations set forth herein constitute license fees within the meaning of Arizona or federal law as of the Effective Date of this License Agreement.

16. Existing Facilities and Equipment.

(a) Existing System Design. Until the upgrade described in Section 14 is completed, Licensee will continue to provide subscribers at least the same number of channels and the same level of service that was being provided as of January 1, 2007.

(b) PEG Use. Licensee will continue to provide and maintain for PEG use all connections, facilities and equipment that it provided and maintained under its prior License, except equipment used exclusively to deliver PEG programming to subscribers for PEG Channels that are eliminated as per Section 15.

17. Additional Conditions on Use of Rights-of-Way: Specific Practices.

The construction, operation, maintenance and repair of the Cable System must be performed in compliance with this Agreement and all applicable laws, rules and permit requirements regarding use of the Rights-of-Way and public and private property, as adopted and amended from time to time, including, but not limited to, Section 7A-13 of the Cable Ordinance, which establishes minimum requirements for Right-of-Way occupancy. Licensee's obligations and City's rights under this Agreement include, but are not limited to, the following, all of which must be performed at Licensee's expense and at no expense to the City, except where expressly provided otherwise:

(a) Use of Public and Private Property; Generally.

(1) The Cable System shall be constructed, operated and repaired so as to cause minimum interference with the rights and reasonable convenience of property owners (including the City) and users of the Right-of-Way and other public property. Applications for work permits shall be presented to the City Engineer, who may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Licensee, its contractors, or third parties, will include necessary paving, patching, grading, and any other necessary repair or restoration to City Rights-of-Way. All work shall be done to the satisfaction of the City Engineer.

(2) All equipment, lines, and appurtenances which are used in the operation, maintenance, repair or construction of Licensee's system, except for those pieces specifically noted in this License Agreement, and which are located within

Rights-of-Way shall be considered to be part of Licensee's Cable System and shall be Licensee's responsibility. All permits for the operation, maintenance, repair or construction of the Cable System shall be applied for and given in the name of Licensee, who shall be responsible for all work done under the permit regardless of whether the work is done by Licensee, its employees or contractors, or by third parties. To the extent that permit conditions are more stringent than the provisions of this Agreement, the permit conditions shall govern.

(3) Licensee shall obtain all required permits or easements before commencing any construction, reconstruction, repair, maintenance, or other work or property use. Permits for emergency work shall be obtained as soon as possible, but in no event later than one business day after the work is begun.

(4) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and work in the Rights-of-Way or on public property may be subject to the supervision, inspection, approval and direction of City Engineer. Licensee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law and permits during construction, operation and repair of its Cable System. By way of illustration and not limitation, Licensee must comply with the then current edition of City Road Standards, National Electric Code published by the National Fire Protection Association (ANSI/NFPA 70-1990, as of January 1, 2007, and replaced by subsequently adopted additions); National Electric Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (ANSI C2-1990 as of January 1, 2007, and replaced by subsequently adopted additions); and Occupational Safety and Health Administration (OSHA) Safety and Health Standards, and Arizona Revised Statutes, Title 40, Art. 6.3 (Blue Stake Laws). In addition, all work shall be performed in accordance with the National Cable Television Association Standards of Good Engineering Practices and Licensee's Construction Procedures Manual, except as to the extent the practices described therein are inconsistent with applicable law. All traffic control shall be done in compliance with the then current edition of the Manual on Uniform Traffic Control Devices, Part VI.

(5) Licensee shall pay fees associated with the permitting process, which fees shall be charged and billed in accordance with the City's permitting procedures.

(b) Use of Poles and Conduits.

(1) Except as the City may direct otherwise in accordance with the Cable Ordinance or applicable provisions of the City Code, where electrical and telephone utility wiring is installed underground at the time of initial Cable System construction, or when all such wiring is subsequently required by applicable law or regulation to be placed underground, all Cable System lines or wiring and

CABLE RENEWAL LICENSE AGREEMENT –

PAGE 33

equipment shall also be placed underground. Related Cable System equipment such as pedestals must be placed in accordance with code requirements and underground utility rules as interpreted by the City Engineer. In areas where both electric and telephone utility wiring is aerial, Licensee may install aerial cable, except (i) when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation; and (ii) at such time as existing aerial facilities are placed underground, Licensee shall likewise place its facilities underground at its sole expense.

(2) Licensee shall utilize existing poles and conduit wherever possible, and shall not install any new, different, or additional poles, conduit or other facilities except with the express permission or at the direction of the City Engineer. Such express permission shall not be unreasonably denied.

(3) This License Agreement does not grant, give or convey to Licensee the right or privilege to install its facilities in any manner on specific utility poles or equipment of City or any other person without their permission. Copies of all agreements for use of poles, conduits or other utility facilities must be provided to the City Engineer upon request.

(c) Repair and Restoration of Property.

(1) Licensee shall protect Rights-of-Way and public and private property from damage. If damage occurs, Licensee shall promptly notify the property owner.

(2) If Rights-of-Way or public or private property is disturbed or damaged, Licensee shall restore the property to its former or better condition including necessary paving, patching, grading and other necessary repair or restoration. Rights-of-Way or other City property shall be restored to its former or better condition, in a manner and within a time approved by the City Engineer. If restoration of Rights-of-Way or other City property is not satisfactorily performed within a reasonable time, the City Engineer may, after prior notice to Licensee (which notice is adequate if provided in writing to Licensee's local office), or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at Licensee's expense and recover the cost of those repairs from Licensee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Licensee shall pay same to City. If suit is brought upon Licensee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of City, then Licensee shall pay all of City's actual costs resulting from the non-payment, including interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed. It is a violation of this License Agreement for Licensee to leave cable unburied on the ground for more

than the shortest, temporary period required to bury it. Except with the express permission of the City Engineer, this short period may not exceed fourteen (14) business days.

(3) Except in cases of emergency or responses to unplanned system failures where it is impractical to do so, prior to entering onto private property to construct, operate or repair its Cable System (unless the repair or construction can be performed from the Right-of-Way, without disrupting the private property), Licensee shall give the person residing on or using the property adequate notice that it intends to work on the property, a description of the work it intends to perform and a name and phone number the person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users, and that complies in all respects with federal law requirements. In cases subject to the exception for prior notice, notice shall be given to the property owner as soon as practical.

(d) Movement of Cable System for and by City. City may remove, replace, modify or disconnect Licensee's facilities and equipment located in the Rights-of-Way or on any other City property in the case of fire, disaster, or other emergency, or when a City project or activity makes the removal, replacement, modification or disconnection necessary or less expensive for City, and as further provided in the Cable Ordinance. Except during an emergency, Licensee shall receive at a minimum ninety-six (96) hours advanced notice from City prior to its taking such action and City shall, when feasible, provide Licensee with the opportunity to perform such action. Following notice by City, Licensee shall remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other City property by a deadline specified by the City. If Licensee fails to complete this work within the time prescribed and to City's satisfaction, City may cause such work to be done and bill the cost of the work to Licensee. Within thirty (30) days of receipt of an itemized list of those costs, Licensee shall pay City. Notwithstanding any other provision of this Agreement, City, its officials, officers, employees and agents shall not be liable to Licensee for any damage caused as a result of action taken under this subsection.

(e) Movement for Other License or Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation, maintenance or repair of the facilities or equipment of another City license or franchise holder, Licensee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The parties whose facilities are involved shall determine how costs associated with the removal, relaying or relocation shall be allocated if the issue is not resolved by state or federal statutes or regulations. Licensee may require such payment in advance. However, if Licensee's facilities were not properly installed, Licensee shall bear costs

associated with moving them, provided that this sentence shall not apply where the misplacement of Licensee's Cable System had no effect on access to the poles or to the Rights-of-Way.

(f) **Movement for Other Permittees.** At the request of any person holding a valid oversize load or similar permit and upon reasonable advance notice, Licensee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes, including standby time, must be paid by the permit holder, and Licensee may require the estimated payment or a portion of the same in advance.

(g) **Tree Trimming.** Licensee shall have the authority to trim trees that overhang a Right-of-Way in accordance with Section 7A-13(9) of the Cable Ordinance.

(h) **Decisions of City Engineer.** Whenever a decision, requirement or approval is by this Agreement to be a determination of the City Engineer, that determination shall be conclusive upon the parties hereto, with respect to the City's review of the matter.

(i) **Right-of-Way Vacations.** If, at any time, City vacates any Rights-of-Way covered by this limited license, City shall not be liable for any damages or loss to Licensee by reason of such vacation upon providing Licensee notice of such vacation or abandonment. Vacation by ordinance shall be deemed to be notice to the Licensee.

18. Operation and Reporting Provisions.

(a) **Books and Records.** The Licensee agrees that the City may inspect and copy such of its books and records as is reasonably necessary to ensure compliance with the terms of this License Agreement or of applicable law. So that the Licensee may organize the necessary books and records for easy access by the City, and to permit Licensee to identify the basis for the claim to access, the notice shall specifically reference the purpose for which the information is sought and the particular section(s) of the License that may apply.

(b) **Access to Books and Records.** The Licensee shall allow the City to inspect and copy the books and records described in subsection (a) at the Licensee's local business office, during normal business hours, or shall provide them to the City for inspection at City Hall or at such other mutually agreed upon location within the City. The City will not unreasonably refuse a request that it inspect and copy documents at Licensee's facilities within the City. Alternatively, if the books and records are not easily accessible at the local offices of the Licensee, the Licensee may, at its sole option, choose to pay the reasonable travel costs of

the City's representative to view the books and records at the appropriate location.

(c) Maintenance and Retention of Records. Licensee must maintain or have access to a complete set of books and records. For purposes of this Section, the Licensee shall not be required to maintain any books and records for license compliance purposes longer than three (3) years.

(d) Production. Information requested shall be made available for inspection within thirty (30) days of a request therefor, except that the City may shorten the response time where necessary to comply with deadlines established by state or federal law, provided that it has not delayed unreasonably in submitting the request to Licensee. The response period also shall be subject to extension upon mutual agreement.

(e) Customer Privacy Information; Proprietary and Confidential Information.

(1) Nothing in this License Agreement or the Tucson City Code shall be read to require that Licensee violate any provision of federal or state law relating to customer privacy.

(2) Proprietary and Confidential Information. To the extent provided by law, the City agrees to treat as confidential any and all proprietary information clearly marked as such to which Licensee provides City access, and shall not publicly disclose the same insofar as permitted by the Arizona Public Records Law, A.R.S. § 39-121 et seq. and other applicable law. City will provide written notification to Licensee if any third party seeks access to any document that is marked confidential, and City will withhold releasing the document to the extent allowed by law to permit Licensee to seek court protection against the release of the requested documents. City agrees to treat any information disclosed by Licensee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know in order to enforce the provisions hereof. City will require its representatives, agents, or consultants to maintain the confidentiality of Licensee's proprietary and confidential information.

(f) Reports. Upon sixty (60) days written notice by City, which period shall be subject to extension for good cause shown, Licensee shall submit the following reports. Anything to the contrary in this License Agreement or the Tucson City Code notwithstanding, Licensee's obligation to prepare and provide the following reports shall arise only upon written request by City as described in this Section.

(1) Annual Report. The Annual Report shall contain at least the following information regarding the previous calendar year operations of the Cable System:

- (i) A summary of activities in the development of the Cable System, including cable television services begun or discontinued, total number of subscribers, homes passed, subscribers added or discontinued;
- (ii) A list of all complaints and system downtime received or experienced during the reporting period (all such submitted data shall include complaint disposition and response time);
- (iii) A summary by category of written complaints received concerning the Cable System, identifying the number and nature of complaints and their dispositions;
- (iv) A fully audited revenue report, or a revenue report certified as correct by an officer of the Licensee;
- (v) A list of officers and members of the board of directors of the Licensee and its parents;
- (vi) A full schedule of all subscriber and user rates, fees and charges for all Cable Service provided; and
- (vii) A copy of subscriber and user agreements used by the Licensee; *provided that*, when it provides the information required by subparagraphs (vi) and (vii), a licensee need not include proprietary MDU rates and agreements unless specifically requested by the City.

(2) Subscriber Survey. Licensee shall provide upon request a subscriber opinion survey report identifying subscriber satisfaction/dissatisfaction with Cable Service offered by Licensee. Licensee may submit to City the most recent subscriber opinion survey report it has prepared to satisfy this obligation if such report has been prepared no more than twelve (12) months before City's request under this Section.

(3) Other Reports. Licensee shall also provide the following reports upon request by the City:

- (i) A report showing compliance with the requirements regarding telephone calls and installations specified in the customer service standards;
- (ii) The total number of complaints received for the most recent calendar quarter, including the number of complaints by type of complaint and complaints received as a percentage of basic subscribers; and
- (iii) A list of all services offered by the Licensee, including any non-Cable Service; *provided that*, if City requests more than one such report in any twelve (12)

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month period, subsequent filings need only identify new services and changes in services offered; and

(iv) The percentage of time service interruptions were cured within thirty-six (36) hours; the average time from notice that a problem existed to final cure; and the percentage of time that other service calls were resolved within ninety-six (96) hours; and

(v) The percentage of time standard and non-standard installations were completed within the time required by the Cable Ordinance; and

(vi) The total number of outages, divided into planned and unplanned outages, and showing the number of outages and the total duration of outages. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than three (3) subscribers.

(vii) Other reports as may be required under the Cable Ordinance to determine compliance with the License Agreement or applicable law.

(g) To the extent the books and records that are subject to production under Section 18(a) are held by third parties, affiliates or contractors or subcontractors of Licensee, Licensee is responsible for collecting those books and records and producing them as described in subsection 18(b).

(h) If Licensee disputes whether a request for books and records satisfies the standards in Section 18(a), then at least ten (10) days prior to the date the books and records must be produced, Licensee shall notify the City in writing of the basis for the dispute. Upon receipt of the notice, the City may modify, withdraw or maintain its request. If the City thereafter notifies Licensee that the disputed request is still outstanding in whole or in part, Licensee must produce the documents within five (5) days of the notice from the City, unless it obtains an order from a court of competent jurisdiction enjoining the request.

(i) Charges for Audits or Tests. In addition to any expenses Licensee must bear under subsections 18(a) and (b) of this Section, if an inspection or audit of Licensee's records shows that Licensee underpaid the license fee by four percent or more for any payment period, Licensee shall reimburse City for all reasonable costs including expert fees arising from the inspection or audit, and any additional inspection or audit until it is determined Licensee is in full compliance. In addition, except as federal law prevents the City from enforcing any technical standards, if it is determined that Licensee has not materially complied with FCC technical standards, City shall have the right to charge all costs arising from these tests, including expert fees, to Licensee until it is determined that Licensee is in full compliance. Notwithstanding the foregoing, the obligation to pay the City's costs for tests of the technical performance of the

Cable System shall only arise if the City test is (1) a test of an area where Licensee has represented that it has corrected a problem, and the problem was not in fact corrected; (2) a second test of an area by the City, where Licensee had been notified of the problem and been given an opportunity to cure it; or (3) where Licensee challenged the validity of a City test, and the City agrees to re-test, and the re-test confirms the validity of the initial City test. These charges are incidental to the enforcement of the license; they do not limit any right City may have to exercise any other remedy.

19. Remedies.

(a) Rights of City. In addition to exercising any of the other remedies provided in this Agreement, or the remedies available under applicable law, City may revoke the license pursuant to Section 7A-24(2) of the Cable Ordinance or declare the license forfeited pursuant to 7A-24(3) of the Cable Ordinance, for any reason for which the license could have been revoked or forfeited thereunder as of the date the City signed this License Agreement. Licensee shall always be entitled to at least the level of due process provided for in the Cable Ordinance as of the Effective Date of this License Agreement, and the parties agree that if the City complies with the procedure set forth in Section 9(c), Section 7A-24(2) will have been satisfied.

(b) Effect of Revocation or Forfeiture. The revocation or forfeiture of Licensee's rights under the License Agreement shall not affect any of City's rights under the preceding license or applicable law. Licensee shall continue to be bound, for example, by any duties it may have under the Cable Ordinance to continue to provide service.

20. Abandonment.

(a) Effect of Abandonment. If Licensee abandons its System during the term of this License Agreement, or fails to operate its Cable System in accordance with its duty to provide continuous service, City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until Licensee restores service under conditions acceptable to City or until the License Agreement is revoked and a new licensee selected by City is providing service; or obtain an injunction requiring Licensee to continue operations. If City is required to operate or designate another entity to operate the Cable System, Licensee shall reimburse City or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

(b) What Constitutes Abandonment. City shall be entitled to exercise its option and obtain any required injunctive relief if:

- (1) Licensee willfully fails to provide Cable Service in accordance with this Agreement over a substantial portion of the Service Area for seven (7) days, unless City authorizes a longer interruption of services; or
- (2) Licensee, for any period, willfully stops operating the Cable System as it is required to operate it under this License Agreement in a substantial portion of the Service Area.

21. Purchase Option.

City shall have the option to purchase or to effect a transfer of ownership of the Cable System as provided herein, to the extent consistent with federal and state law.

(a) The City shall have the right to purchase the Cable System at a price not to exceed its fair market value as defined in this Section 21 if the License Agreement is revoked or expires and is not renewed. This right to purchase only applies if the revocation is lawfully undertaken pursuant to the terms of this License Agreement or if the non-renewal is lawful under applicable law and is based upon the following criteria, and in either case only after all appeals have been exhausted by Licensee pursuant to the terms of this License Agreement and a final and non-appealable judgment by a court of competent jurisdiction upholds such revocation or non-renewal. The non-renewal criteria are:

- (1) the past performance of the Licensee (47 U.S.C. § 546(c)(1)(A)-(B));
- (2) the qualifications of the Licensee (47 U.S.C. § 546(c)(1)(C)); or
- (3) the proposal does not reasonably meet the future cable-related needs of the community in light of the costs thereof (47 U.S.C. § 546(c)(1)(D)); *provided, however*, a proposal including the maximum terms permitted for PEG and for license fees under state law (ARS §§ 9-505; 9-506) will not be denied on the ground that Licensee should have exceeded those maximum terms for PEG and for license fees to meet the needs and interests of the community unless, at the time of renewal, federal law governing cable preempts or supersedes ARS § 9-505 and ARS § 9-506 and denial is consistent with the then-controlling federal and state law.

(b) In accordance with Section 627 of the Cable Act (47 U.S.C. § 547), if a renewal of a license is denied or is revoked for cause and the City acquires ownership of the Cable System or effects a transfer of ownership of the Cable System to another person pursuant to this Section, any such acquisition or transfer shall be at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the license itself.

CABLE RENEWAL LICENSE AGREEMENT –

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(c) Nothing in this Section 21 shall be construed to limit the City's authority to grant or deny a license renewal in a manner consistent with applicable law.

(d) Nothing herein shall constitute a waiver of Licensee's right to claim that the option to purchase described in this Section or the exercise thereof constitutes an impermissible restriction on the provision of telecommunications or information services by Licensee or Licensee's affiliate or that the purchase price constitutes an impermissible taking pursuant to federal or state law.

22. Miscellaneous Provisions.

(a) Governing Law. This Agreement shall be governed in all respects by federal law and the laws of the State of Arizona. All actions brought under this Agreement, whether brought in state or federal court, shall be brought in a court located in Tucson, Arizona, unless prohibited by law.

(b) Force Majeure. Licensee shall not be deemed in default of provisions of this License Agreement where performance was rendered impossible by war or riots, civil disturbances, acts of terrorism, labor strikes, floods, or other circumstances beyond Licensee's control, and the license shall not be revoked or Licensee penalized for such noncompliance, provided that Licensee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this License Agreement without unduly endangering the health or safety of Licensee's employees or the integrity of its property, or the health or safety of the public, or the integrity of Rights-of-Way, public property, or private property; and only if Licensee has notified City in writing of the reason for the inability within ten (10) business days of Licensee's discovery of the reason.

(c) Connections to System; Use of Antennas.

(1) Subscribers shall have the right to attach devices to Licensee's Cable System to allow them to retransmit signals or services when authorized by Licensee. Subject to reasonable provisions to prevent signal and service theft, subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment and, if possible, Licensee shall provide information to subscribers which will allow them to adjust such devices so that they may be used with Licensee's Cable System.

(2) Licensee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or to disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit a subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable law.

CABLE RENEWAL LICENSE AGREEMENT –
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(d) Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last calendar day of the prescribed or fixed period of time. For example, if on January 1, Licensee is directed to take action within ten (10) days, the action must be completed no later than midnight, January 11.

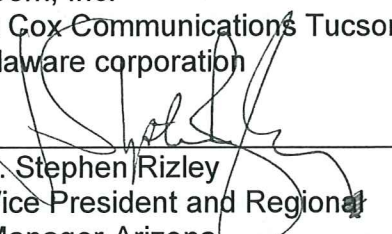
(e) Time of Essence; Maintenance of Records of Essence. In determining whether Licensee has substantially complied with this Agreement, the parties agree that time is of the essence to this Agreement. As a result, Licensee's failures to complete construction, extend service, seek approval of transfer, or provide information in a timely manner constitute material breaches.

(f) Guarantee. A signed guarantee of performance, in a form acceptable to City shall be filed by Licensee with the City Manager by June 1, 2007 and prior to the Effective Date of the Licensee's license.

(g) Captions. The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

AGREED TO THIS 1st day of May, 2007.

CoxCom, Inc.
d/b/a Cox Communications Tucson,
a Delaware corporation

By: 
J. Stephen Rizley
Its: Vice President and Regional
Manager-Arizona

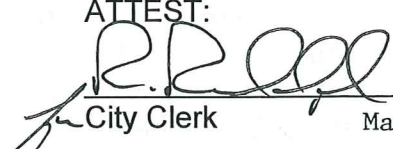
Date: 11 April 2007

CITY OF TUCSON

By: 
Robert E. Walkup
Its: Mayor PRO-TEMPORE

Date: May 1, 2007

ATTEST:


City Clerk May 1, 2007

APPROVED AS TO FORM:

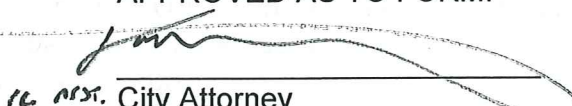

City Attorney

EXHIBIT A

PEG Entertainment-on-Demand Capability (EOD)

Licensee will provide 2,000 hours of online, EOD capacity for PEG use that provides features and functionality (including signal quality) for PEG EOD equivalent to the features and functionality provided for commercial EOD via three virtual PEG EOD channels. In addition, at the time it provides PEG EOD capacity, Licensee will provide Access Managers the ability to program material virtually live (subject to a delay of a few seconds). Initially, Licensee will carry one live EOD feed from any of the five Access Managers at one time. Upon request, Licensee will carry up to two additional live feeds at any time (one per virtual channel).

The City can identify up to five Access Managers who will be able to use PEG EOD. Each designated Access Manager will have the responsibility for delivering signals intended for PEG EOD to Licensee at an upstream delivery point at their playback center. Licensee will be responsible for maintaining the necessary connections, servers and other electronic devices required to provide the fully functioning PEG EOD system.

Each Access Center shall be provided the ability to upload and remove programming with assistance from the Licensee from the Licensee's EOD server capacity, and for providing and editing the necessary metadata required for menus to operate properly. Licensee will provide each Access Center with the software and control mechanisms required. Licensee will provide technical assistance to Access Managers so that each is familiar with the way programming and menu data are to be provided. Licensee will take whatever steps are necessary to ensure digital subscribers have access to stored and live PEG EOD programming. PEG operators will notify Licensee when programming or data is uploaded incorrectly and, Licensee will resolve issues promptly. Licensee will establish a point of contact, or a process for notifying Licensee when programming is to be updated, and Access Managers will use that contact or process when they require Licensee to update programming or data. Programming and data will be updated promptly.

PEG EOD will be provided by the time required in the License. However, a smooth implementation of the PEG EOD will require a cooperative planning effort, so the parties will establish a joint technical planning – design group that will include the Licensee's technical staff, PEG users and City's technical advisors. The planning – design group will oversee the PEG EOD implementation process. The group will design, and Licensee will implement a system that has the following characteristics, in addition to those described above:

- The maximum storage capacity for all PEG users will be 2,000 hours.
- Online storage capacity can be apportioned or subdivided for storage of EOD programs of individual Access Managers as long as total does not exceed 2,000 hours of storage capacity.

- Subscribers will access the PEG programs through a menu system that has the same level of menu, graphic and text display provided for commercial services. At the highest level, there will be three virtual channels, named as designated by the City.
- The Licensee will provide an uploading signal path, that allows independent transmission of the other PEG signals being provided under the License, programming from up to five defined PEG facilities for the purpose of loading said programming on the EOD server.
- Each of the five PEG uploading locations can deliver the video programming to Licensee in either analog NTSC baseband, or serial digital format to the Licensee, or such other digital format as is in common use
- To the maximum extent that is practical, the functionality for controlling the uploading process, and transfer in text and graphic information displayed on the menus, the EOD program transmission link will employ control functionality such as e-mail, web browser interfaces, etc. to minimize the need for intervention or the manual operation support from the Licensee staff.
- A simple method for promptly removing programming and metadata from the server.

For purposes of this section, a virtual channel refers to a set of programs that appears to subscribers to be provided on a distinct physical channel. The manner in which Licensee will offer the virtual PEG channels will mirror the manner in which commercial EOD is offered. For example, if HBO On Demand appears to have a distinct channel number on the system, PEG EOD channels will as well. If all On Demand appear to be offered on a single channel, PEG EOD channels would appear at the highest menu level. If both methods are utilized, PEG EOD will utilize both methods.

EXHIBIT B

Access Centers

Pima County Community College - 401 N. Bonita Ave.
Tucson Community Cable Corporation - 124 E. Broadway
Tucson Unified School District - 2025 E. Winsett
Channel 12 Offices – 100 N. Stone Ave.
Tucson Fire Department Training Academy - 10001 S. Wilmot Rd.
University of Arizona - Harvill Building, U of A Campus
Pima County Community College - 401 N. Bonita Ave. for combined Access Center¹

Origination Points

Tucson Convention Center - 260 S. Church
City Hall - 255 W. Alameda
Reid Park Bandshell - 22nd and Country Club
Hi Corbett Field, Reid Park - 3400 E. Camino Campestre
Pima County Community College East - 8181 E. Irvington
Lyons Elementary School - 7555 E. Dogwood
Santa Rita High School - 3951 S. Pantano
Carson Jr. High School - 7777 E. Stella
Palo Verde High School - 1302 S. Avenida Vega
Sahuaro High School - 545 N. Camino Seco
Wilmot Library - 530 N. Wilmot
Lakeside Park - 8300 E. Stella Rd.
East Side City Hall - 7575 E. Speedway
Pueblo High School - 3500 S. 12th Avenue

¹ Obligations with respect to this additional link to Pima County Community College are contingent on the City consolidating access playback operations of three access providers at a single location. Obligations with respect to all other Access Centers or Origination Points apply immediately, except as otherwise stated in the License Agreement.